

AMENDED IN ASSEMBLY JULY 13, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 590

Introduced by Assembly Member Walters

February 16, 2005

~~An act to amend Section 65008 of the Government Code, relating to housing discrimination.~~ *An act to amend Section 1240.010 of the Code of Civil Procedure, relating to eminent domain.*

LEGISLATIVE COUNSEL'S DIGEST

AB 590, as amended, Walters. ~~Housing discrimination: senior housing.~~ *Eminent domain: private property.*

The California Constitution authorizes governmental entities to take or damage private property for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner.

The Eminent Domain Law authorizes public entities, as defined, to acquire property only for a public use. Existing law also provides that a use, purpose, object, or function is one for which the power of eminent domain may be exercised where the Legislature has declared by statute that the use, purpose, object, or function is a public use.

This bill would provide that "public use" does not include the taking or damaging of property for private use, including, but not limited to, the condemnation of nonblighted property for private business development.

~~The Planning and Zoning Law prohibits a local agency from prohibiting or discriminating against, among other things, a residential development, as defined, including a multifamily residential project, or emergency shelter because of, among other things, familial status, disability, or age.~~

~~This bill would specify that these provisions do not apply to zoning ordinances or conditional use permits that permit the establishment of seniors only mobilehome parks.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 1240.010 of the Code of Civil Procedure~~
2 ~~is amended to read:~~

3 ~~1240.010. (a) The power of eminent domain may be~~
4 ~~exercised to acquire property only for a public use. Where the~~
5 ~~Legislature provides by statute that a use, purpose, object, or~~
6 ~~function is one for which the power of eminent domain may be~~
7 ~~exercised, such that action is deemed to be a declaration by the~~
8 ~~Legislature that such the use, purpose, object, or function is a~~
9 ~~public use.~~

10 ~~(b) In the exercise of eminent domain, "public use" does not~~
11 ~~include the taking or damaging of property for private use,~~
12 ~~including, but not limited to, the condemnation of nonblighted~~
13 ~~property for private business development.~~

14 ~~SECTION 1. Section 65008 of the Government Code is~~
15 ~~amended to read:~~

16 ~~65008. (a) Any action pursuant to this title by any city,~~
17 ~~county, city and county, or other local governmental agency in~~
18 ~~this state is null and void if it denies to any individual or group of~~
19 ~~individuals the enjoyment of residence, landownership, tenancy,~~
20 ~~or any other land use in this state because of any of the following~~
21 ~~reasons:~~

22 ~~(1) The race, sex, color, religion, ethnicity, national origin,~~
23 ~~ancestry, lawful occupation, familial status, disability, or age of~~
24 ~~the individual or group of individuals. For purposes of this~~
25 ~~section, both of the following definitions apply:~~

26 ~~(A) "Familial status" as defined in Section 12955.2.~~

27 ~~(B) "Disability" as defined in Section 12955.3.~~

28 ~~(2) The method of financing of any residential development of~~
29 ~~the individual or group of individuals.~~

30 ~~(3) The intended occupancy of any residential development by~~
31 ~~persons or families of low, moderate, or middle income.~~

1 ~~(b) (1) No city, county, city and county, or other local~~
2 ~~governmental agency shall, in the enactment or administration of~~
3 ~~ordinances pursuant to this title, prohibit or discriminate against~~
4 ~~any residential development or emergency shelter for any of the~~
5 ~~following reasons:~~

6 ~~(A) Because of the method of financing.~~

7 ~~(B) Because of the race, sex, color, religion, ethnicity, national~~
8 ~~origin, ancestry, lawful occupation, familial status, disability, or~~
9 ~~age of the owners or intended occupants of the residential~~
10 ~~development or emergency shelter.~~

11 ~~(C) Because the development or shelter is intended for~~
12 ~~occupancy by persons and families of low and moderate income,~~
13 ~~as defined in Section 50093 of the Health and Safety Code, or~~
14 ~~persons and families of middle income.~~

15 ~~(D) Because the development consists of a multifamily~~
16 ~~residential project that is consistent with both the jurisdiction's~~
17 ~~zoning ordinance and general plan as they existed on the date the~~
18 ~~application was deemed complete, except that a project shall not~~
19 ~~be deemed to be inconsistent with the zoning designation for the~~
20 ~~site if that zoning designation is inconsistent with the general~~
21 ~~plan only because the project site has not been rezoned to~~
22 ~~conform with a more recently adopted general plan.~~

23 ~~(2) The discrimination prohibited by this subdivision includes~~
24 ~~the denial or conditioning of a residential development or shelter~~
25 ~~because of, in whole or in part, (A) the method of financing or~~
26 ~~(B) the occupancy of the development by persons protected by~~
27 ~~this subdivision, including, but not limited to, persons and~~
28 ~~families of low and moderate income.~~

29 ~~(e) For the purposes of this section, "persons and families of~~
30 ~~middle income" means persons and families whose income does~~
31 ~~not exceed 150 percent of the median income for the county in~~
32 ~~which the persons or families reside.~~

33 ~~(d) (1) No city, county, city and county, or other local~~
34 ~~governmental agency may impose different requirements on a~~
35 ~~residential development or emergency shelter that is subsidized,~~
36 ~~financed, insured, or otherwise assisted by the federal or state~~
37 ~~government or by a local public entity, as defined in Section~~
38 ~~50079 of the Health and Safety Code, than those imposed on~~
39 ~~nonassisted developments, except as provided in subdivision (c).~~
40 ~~The discrimination prohibited by this subdivision includes the~~

1 ~~denial or conditioning of a residential development or shelter~~
2 ~~based in whole or in part on the fact that the development is~~
3 ~~subsidized, financed, insured, or otherwise assisted as described~~
4 ~~in this paragraph.~~

5 ~~(2) No city, county, city and county, or other local~~
6 ~~governmental agency may, because of the race, sex, color,~~
7 ~~religion, ethnicity, national origin, ancestry, lawful occupation,~~
8 ~~familial status, disability, or age of the intended occupants, or~~
9 ~~because the development is intended for occupancy by persons~~
10 ~~and families of low, moderate, or middle income, impose~~
11 ~~different requirements on these residential developments than~~
12 ~~those imposed on developments generally, except as provided in~~
13 ~~subdivision (e).~~

14 ~~(e) Notwithstanding subdivisions (a) to (d), inclusive, nothing~~
15 ~~in this section or this title shall be construed to prohibit any of the~~
16 ~~following:~~

17 ~~(1) The County of Riverside from enacting and enforcing~~
18 ~~zoning to provide housing for older persons, in accordance with~~
19 ~~state or federal law, if that zoning was enacted prior to January 1,~~
20 ~~1995.~~

21 ~~(2) Any city, county, or city and county from extending~~
22 ~~preferential treatment to residential developments or emergency~~
23 ~~shelters assisted by the federal or state government or by a local~~
24 ~~public entity, as defined in Section 50079 of the Health and~~
25 ~~Safety Code, or other residential developments or emergency~~
26 ~~shelters intended for occupancy by persons and families of low~~
27 ~~and moderate income, as defined in Section 50093 of the Health~~
28 ~~and Safety Code, or persons and families of middle income, or~~
29 ~~agricultural employees, as defined in subdivision (b) of Section~~
30 ~~1140.4 of the Labor Code, and their families. This preferential~~
31 ~~treatment may include, but need not be limited to, reduction or~~
32 ~~waiver of fees or changes in architectural requirements, site~~
33 ~~development and property line requirements, building setback~~
34 ~~requirements, or vehicle parking requirements that reduce~~
35 ~~development costs of these developments.~~

36 ~~(3) Any city, county, or city and county from enacting senior~~
37 ~~mobilehome park zone ordinances or granting conditional use~~
38 ~~permits for mobilehome parks, so long as the senior mobilehome~~
39 ~~park or zone qualifies as "housing for older persons" under the~~
40 ~~federal Fair Housing Act (42 U.S.C. Sec. 3601 et seq.).~~

1 ~~(f) “Residential development,” as used in this section, means a~~
2 ~~single-family residence or a multifamily residence, including~~
3 ~~manufactured homes, as defined in Section 18007 of the Health~~
4 ~~and Safety Code.~~

5 ~~(g) This section shall apply to chartered cities.~~

6 ~~(h) The Legislature finds and declares that discriminatory~~
7 ~~practices that inhibit the development of housing for persons and~~
8 ~~families of low, moderate, and middle income, or emergency~~
9 ~~shelters for the homeless, are a matter of statewide concern.~~

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